

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL :
AUTOMOBILE INSURANCE : Case No. 03-05595-MMB
COMPANY, et al., :
: Plaintiff, : Philadelphia, PA
v. : November 24, 2008
: 3:33 p.m.
AMERICAN REHAB AND PHYSICAL:
THERAPY, INC., d/b/a :
AMERICAN MEDICAL REHAB, :
RICHARD PRIVITERA, et al., :
Defendants. :

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MICHAEL M. BAYLSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: MATTHEW A. MORONEY, ESQUIRE
Goldberg, Miller & Rubin, P.C.
121 South Broad Street, Suite 1500
Philadelphia, PA 19107

For Defendant Privitera: STEVEN D. USDIN, ESQUIRE
Cohen, Seglias, Pallas, Greenhall
& Furman, P.C.
30 South 17th Street
Philadelphia, PA 19103

Audio Operator: Milahn Hull

Transcribed by: DIANA DOMAN TRANSCRIBING
P.O. Box 129
Gibbsboro, New Jersey 08026-0129
(856) 435-7172
FAX: (856) 435-7124
EMAIL: dianadoman@comcast.net

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1 THE CLERK: All rise.

2 THE COURT: Okay, good afternoon.

ALL COUNSEL: Good afternoon, Your Honor.

4 THE COURT: Okay. We're here for a hearing in State
5 Farm Mutual Automobile Insurance Company vs. American Rehab,
6 civil action 03-5595.

7 Okay, for the plaintiff we have Mr. Usdin, is that
8 right?

9 MR. USDIN: No, Your Honor, I'm for the defendant.

10 THE COURT: Oh, I'm sorry, who's here for the
11 plaintiff?

12 MR. MORONEY: I am, Your Honor. Matthew Moroney.

13 THE COURT: Okay, sorry. Okay.

14 All right, and -- let me just see -- all right,
15 you're with Mr. Goldberg, Cy Gold -- Goldberg, Miller & Rubin?

16 MR. MORONEY: Yes, Your Honor.

17 THE COURT: Oh, you are, okay. All right. And then
18 Mr. Usdin, you're here for whom?

19 MR. USDIN: I'm here for Mr. Privitera.

THE COURT: All right. Mr. Privitera, you're here?

21 MR. PRIVITERA: Yes, I am, Your Honor.

THE COURT: All right, let's swear Mr. Privitera in.

23 RICHARD PRIVITERA, SWORN

24 THE CLERK: Please state your full name and spell
25 your last name for the record.

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1 MR. PRIVITERA: Good afternoon. Richard Privitera,
2 P-R-I-V-I-T-E-R-A.

3 THE COURT: All right. Now, just for the background
4 of this case, I had entered a default judgment against Mr.
5 Privitera sometime in 2005. And then, he was deposed and was
6 unable to provide information to certain questions that I
7 think were very relevant. And, then I issued another order
8 dated -- you can all sit down if you want -- dated July 17th,
9 2008, where I ordered that Mr. Privitera is compelled to
10 disclose the identity of a holding company to whom he pays
11 rent and produce a copy of a rent check in aid of execution of
12 the judgment entered against him on October 20th, 2005 within
13 14 days of the date of this order.

14 Apparently, that was not done, and then the
15 plaintiffs filed another motion, and then I entered an order
16 on October 20th, 2008, requiring Mr. Privitera to appear for a
17 hearing today concerning two motions. One, a motion to compel
18 subpoenaed documents from Comcast Communications regarding
19 payments by Richard and Elaine Privitera in order to waive
20 execution of defendant's judgment against Mr. Privitera.

21 And two, defendant's motion to compel a bench
22 warrant for the arrest of Mr. Privitera due to Mr. Privitera's
23 refusal to comply with the Court's order on July 17th, 2008 to
24 disclose the identity of the holding company to which he pays
25 rent, and to provide a copy of a rent check.

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1 Okay, now, Mr. Privitera, you're now under oath.

2 Are you prepared to identify the name of the holding company
3 to whom you pay rent?

4 MR. PRIVITERA: Your Honor, as I explained to my
5 counsel, that there was no -- I thought there was a holding
6 company because I rent the house, and the lady I rent it from
7 is an Asian lady. And I thought she told me she owned it in a
8 holding company. And --

9 THE COURT: Well, to whom do you pay the rent?

10 MR. PRIVITERA: I pay the rent directly to her. But
11 I thought it was a hold -- because it's the initial plus --

12 THE COURT: Well, to whom -- do you have a copy of
13 the rent check here?

14 MR. PRIVITERA: I pay cash, Your Honor. I have
15 copies of --

16 THE COURT: Well, what's the name of the person you
17 pay --

18 MR. PRIVITERA: M. Lee.

19 THE COURT: M. Lee?

20 MR. PRIVITERA: Yeah. Myung which I -- Myung Lee.
21 I'm not sure --

22 THE COURT: What's the address?

23 MR. PRIVITERA: Her address is on --

24 MR. USDIN: Your Honor, if I might?

25 THE COURT: Yes.

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1 MR. USDIN: Your Honor, on Friday morning, I was
2 retained by Mr. Privitera to assist him at today's hearing.

3 As a result of that retention, I reached out to Mr.
4 Moroney's law firm and provided them with the information that
5 was directly in response to the questions that you are now
6 posing.

7 We advised them that as far as the Comcast account
8 is concerned, Mr. Privitera pays that account in cash. I just
9 talked to Mr. Moroney today who advised me that based on that
10 information he's going to seek out a subpoena to Comcast for
11 additional information.

12 I also on Friday provided them with the name,
13 address and telephone number of the owner of the real estate,
14 which is Myung Lee, M-Y-U-N-G, L-E-E, 430 Mallard Circle --

15 THE COURT: 430 what, sorry?

16 MR. USDIN: Mallard, like the duck, Judge.

17 THE COURT: M?

18 MR. USDIN: M-A-L-L-I-A-R-D (sic).

19 THE COURT: Yes, where's that?

20 MR. USDIN: Circle, Blue Bell, Pennsylvania, 19422.
21 I also provided her telephone number, 267-939-0505.

22 I had been informed, and I just spoke to Mr. Moroney
23 again today, that Mr. Moroney in fact on Friday did speak to
24 Ms. Lee. And --

25 THE COURT: Did speak to who, I'm sorry?

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1 MR. USDIN: Ms. Lee.

2 THE COURT: Yes.

3 MR. USDIN: The owner of the real estate. He had
4 that conversation with her on Friday.

5 So, my point, Your Honor, is that we have tried in a
6 very short quick period of time to be as responsive to the
7 requests and the desires of plaintiff to obtain information
8 from us.

9 I also advised, and we have already consented,
10 counsel and I, that Mr. Privitera will be available again to
11 be deposed under oath to answer any subsequent or supplemental
12 questions to the deposition that was taken of him without
13 counsel present.

14 So we are trying to make an attempt and effort to
15 demonstrate to the Court that we are being as responsive as we
16 can to assist State Farm in completing its deposition in aid
17 of execution of this matter.

18 THE COURT: All right, Mr. Moroney, what's your
19 position?

20 MR. MORONEY: Good afternoon, Your Honor. It is
21 correct that we were contacted by Mr. Usdin on Friday
22 regarding this matter. I think Your Honor's procedural
23 history is correct listed earlier.

24 As you know, State Farm was conducting asset
25 discovery on Mr. Privitera through the deposition in January

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1 2008 and learned that at least at that point, he was working,
2 he was making about \$10,000 per month, which is a substantial
3 amount I would suggest, and that he was paying rent in the
4 amount of \$2800 per month. And that amount was going to a
5 holding company.

6 He identified his bank account, he identified two
7 bank accounts, one being Wachovia, one being Commerce Bank.
8 He said he didn't recall the name of the holding company at
9 the deposition.

10 We subsequently then did further investigation. We
11 subpoenaed Comcast, went down that avenue and learned that Mr.
12 Privitera never had an account with Comcast. That was not
13 correct information. We subsequently requested Mr. Privitera
14 for a copy of the check with the name of the holding company.
15 He never responded to our request. Again, Your Honor entered
16 the order in July.

17 After the order in July, once again we contacted Mr.
18 Privitera on a number of occasions; no response. We filed our
19 motion, our credit motion, and Friday Mr. Usdin did contact
20 with us with information, stated it was a woman. I contacted
21 the woman and she did in fact state that she is the landlord
22 for Mr. Privitera.

23 THE COURT: Well, Mr. Usdin, I guess I have a
24 question, that if your client was very simply paying cash to a
25 woman, why would he say at his deposition that he was paying a

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1 foundation?

2 MR. USDIN: Well, in his deposition he said that he
3 was paying to a holding company.

4 THE COURT: A holding company I mean, a holding
5 company.

6 MR. USDIN: And I believe that Mr. Privitera just
7 explained to you, which is the way he explained it to me when
8 I spoke with him on Friday, that is that quite frankly he
9 misunderstood. The woman apparently has a very limited grasp
10 of the use of the English language and he just didn't
11 understand and mistook what she was saying to him about who
12 the owner of the property is.

13 However, Your Honor -- counsel had performed a title
14 search on the property, Mr. Privitera had no ownership in that
15 interest whatever, and our understanding is that Ms. Lee is
16 the owner of record.

17 THE COURT: Well, it seems to me, Mr. Moroney, that
18 you know, I don't know what you want to do, and if you want to
19 take Mr. Privitera's deposition again, I'll allow that.

20 Now, but I think you're entitled to a balance -- a
21 personal financial statement from Mr. Privitera prepared under
22 oath, subject to penalties against perjury.

23 Consult with your client, Mr. Usdin, on how much --
24 how quickly he can prepare that. I think the plaintiff's
25 entitled to that, if we're going to absolve this motion.

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1 And I'm talking about a very short period of time,
2 no more than one week.

3 MR. USDIN: Your Honor, if we might, Mr. Privitera
4 just told me his accountant is on vacation this week. I was
5 going to stand up and ask for two weeks, because we have the
6 holiday --

7 THE COURT: Is that all right? All right.

8 MR. MORONEY: No objection.

9 THE COURT: All right, 14 days. So within 14 days
10 you'll submit to the plaintiff a financial statement sworn to
11 and taken subject to penalties against perjury.

12 And then if you want to take his deposition, Mr.
13 Moroney, you can, but I'd like to have a report from you
14 within 30 days as to where things stand, okay?

15 MR. MORONEY: Yes, sir.

16 THE COURT: So if you want to do the deposition,
17 that should be done within 14 days thereafter. So basically
18 by December 24th, the day before Christmas, you should have
19 the financial statement within 14 days.

20 And Mr. Privitera, if the plaintiff wants to take
21 your deposition after that, you understand that you have to
22 appear at the time and place they designate within 14 days
23 thereafter. Is that clear?

24 MR. PRIVITERA: Yes, it is, Your Honor.

25 THE COURT: All right. And Mr. Usdin, you're

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1 welcome to attend if he wants to be there, that's up to you.

2 But --

3 MR. USDIN: I plan to attend, Your Honor. And as I
4 said in my little brief opening statement, we did make that
5 offer on Friday.

6 THE COURT: All right.

7 MR. USDIN: We would participate to whatever extent
8 necessary.

9 THE COURT: All right. Okay, well, so by December
10 24th I'd like to have a report from the plaintiff as to where
11 this motion stands, and I'll hold it in abeyance pending these
12 events. And I'll issue a short order about this. Is that all
13 right? Does anybody have any objections or further comments?

14 MR. USDIN: I do not. Your Honor, I will probably
15 tomorrow morning file a notice of appearance in the matter and
16 see what my client --

17 THE COURT: Okay, thank you. Do you have any
18 comments or requests?

19 MR. MORONEY: No, Your Honor.

20 THE COURT: All right. Okay. Thank you very much
21 for coming in.

22 MR. USDIN: Thank you, Your Honor, and --

23 THE COURT: And let me say one other thing, Mr.
24 Privitera. I'm glad you have counsel now, but if you get any
25 more notices to appear, either for a deposition or in this

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1 Court, you must appear. Do you understand that? You're
2 skating on thin ice at this point.

3 MR. PRIVITERA: I thank you. Thank you for your
4 consideration. I'll be honest with you, it's taken so much
5 out of me, I just -- I don't have any --

6 THE COURT: Well, you'll file a sworn financial
7 statement and then we'll go from there.

8 Yes, sir?

9 MR. MORONEY: Your Honor, I think just one more
10 thing I have for housekeeping. There is another motion on for
11 today, regarding records of Comcast Cable.

12 THE COURT: Now, do you want me to enter an order --
13 you want a judge to enter an order against Comcast?

14 MR. MORONEY: Your Honor, Comcast -- there's a
15 statute in place that says they normally provide the
16 information pursuant through a court order, or an
17 authorization from the customer who is Mr. Privitera. I would
18 accept if Mr. Privitera would provide written authority, which
19 I can get the records directly from Comcast.

20 THE COURT: All right. Well, if you -- do you give
21 that authority, Mr. Privitera?

22 MR. PRIVITERA: It's under my wife's name, Your
23 Honor.

24 THE COURT: All right, would you authorize Mr. Usdin
25 to sign a stipulation to that effect?

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1 MR. USDIN: Apparently what Mr. Privitera is telling
2 me is that the account is under his wife's name, but --

3 MR. PRIVITERA: I can give permission for me.

4 MR. USDIN: We will work that out. I will either
5 have her --

6 THE COURT: All right, well, here's the thing. I
7 have a very small amount of Comcast stock, so I can't issue an
8 order against Comcast. So I suggest you work out a
9 stipulation and you can file it in this case, and I'll see if
10 another judge would approve it. But if you need to litigate
11 the motion, I'm going to have to send it to another judge.

12 MR. MORONEY: Understood, Your Honor.

13 THE COURT: Okay.

14 MR. MORONEY: Thank you.

15 THE COURT: All right, thanks very much for coming
16 in.

17 MR. USDIN: Thank you, Your Honor.

18 THE COURT: Right.

19 THE CLERK: All rise.

20 (Matter concluded at 3:46 p.m.)

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3 **C E R T I F I C A T I O N**
4

5 I, Sandra Carbonaro, court approved transcriber,
6 certify that the foregoing is a correct transcript from the
7 official electronic sound recording of the proceedings in the
8 above-entitled matter.

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12 SANDRA CARBONARO

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14 Doman Transcribing & Recording Svcs. _____

15 AGENCY

DATE